

REMARKS/ARGUMENTS

The Office Action mailed December 4, 2006 has been carefully considered.

Reconsideration in view of the following remarks is respectfully requested.

Claim Status and Amendment to the Claims

Claims 1-4, 9-24, 26, 30-32, 52, 63-85 and 87-91 are now pending.

No claims stand allowed.

Claims 1, 9, 13, 17, 20, 30, 63, 66, 68, 69, 71, 74, 76, 78, 81, and 83 have been amended to further particularly point out and distinctly claim subject matter regarded as the invention. Support for these changes may be found in the present specification, page 3, lines 20-24 and page 10, lines 15-16. The amendment also contains minor changes of a clerical nature.

No "new matter" has been added by the amendment.

The 35 U.S.C. §103 Rejection

Claims 1-4, 9-23, 26, 30-31, 52, 63-85 and 87-91 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dixon et al. (U.S. Pat. No. 6,058,424) in view of Lamarque et al. (U.S. Pat. No. 6,690,651).

This rejection is respectfully traversed.

According to M.P.E.P. §2143,

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.

Furthermore, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In the Office Action, the Examiner contends that the elements of the presently claimed invention are disclosed in Dixon except that Dixon does not teach “that the user placing a request by calling in.” The Examiner further contends that Lamarque teaches “a user placing a request by calling in,” and that it would be obvious to one having ordinary skill in the art at the time of the invention to incorporate “Lamarque’s teachings into the computer system of Dixon “to request data information through a network because it would have enabled user to bypass long distance carriers and their permanent usage erates and to run voice traffic over the Internet.” The Applicants respectfully disagree for the reasons set forth below.

Claim 1, as amended, defines a backup server for enabling a data communications network to recover from a local server failure, the data communications network including a local server and a network access server (NAS), the NAS capable of coupling a call placed from a call-in user to the data communications network and providing a network connection to the local server, the NAS having a memory associated therewith. The claimed backup server comprises (a) an information packet receiver responsive to the local server failure, the information packet receiver receiving from the memory associated with the NAS an information packet associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information for maintaining connection of the ongoing call if the local server fails, and (b) a parser for reconstructing the call information from the information packet, such that the backup server maintains the ongoing call to the data communications network.

Regarding Dixon:

In the Office Action, the Examiner specifically equates Dixon’s control server (**111** in FIG. 1 or **211** in FIG. 2 thereof) with the claimed network access server (NAS), Dixon’s original application server (**208** in FIG. 2 thereof) with the claimed local server, Dixon’s new application server (**209** or **210** in FIG. 2 thereof) with the claimed backup server, and Dixon’s client (**101** in FIG. 1 or **201** in FIG. 2 thereof) with the claimed user, citing the abstract, FIGS. 1 and 5, column 3, lines 11044, column 7, line 53 to column 8, line 51, column 9, line 46 to column 10, line 17, and column 10, lines 18-36 of Dixon.

However, in Dixon, it is the application server **208** that “handles communication with a client (the alleged user) requesting an asset” (column 4, lines 13-14 thereof), not the control server **211**. Dixon’s control server **211**’s functionality only includes “selection of data pumps and command processing,” controlling the number of multimedia or audio/video data streams, providing multimedia file data stream control functions such as “play”, “stop”, “pause”, “rewind”, and “forward”, resource management such as admission control and load balancing, and storing a catalog of multimedia assets (see column 3, line 66 through column 4, line 12 of Dixon). That is, functions performed by Dixon’s control server **211** are limited to control of multimedia data streams and management of the data. In addition, as shown in FIG. 2 thereof, the client system **201** directly communicates with the application server **208** (the alleged local server) in the multimedia server system **203** without intermediated by the control server **211**.

Accordingly, Dixon’s control server **211** does not teach or suggest coupling a user’s request (or alleged call) to the network **105** or providing a network connection to the application server **208** (the alleged local server), as recited in claim 1.

Since Dixon fails to teach or suggest the claimed NAS, Dixon also fails to teach or suggest a memory associated with the NAS, from which an information packet containing call information, as recited in claim 1.

Regarding Lamarque and its alleged combination with Dixon:

Lamarque relates to the Internet telephony which is also referred to as “voice over IP” (VoIP). Lamarque’s system only routes voice messages, and is not suitable to request data (web-access) or to transmit data over the Internet. Accordingly, those of ordinary skill in the art would not utilize Lamarque’s teachings into Dixon “to request data information through a network,” contrary to the Examiner’s allegation.

In addition, the alleged advantages of utilizing Lamarque would make sense only when it is compared with a conventional long distance call using a traditional telephone (voice) system (or PSTN **102** in FIG. 1 of Lamarque), not with a traditional data request/transmission system over the Internet (such as Dixon’s). It should be noted that Lamarque’s idea (VoIP) is to utilize

a conventional data request/transmission system over IP (such as that of Dixon) to make telephone calls such that a long-distance voice call can be made in a similar manner as a data request/transmission using a local call (dial-up) to a nearby access point which is typically provided by an Internet Service Provider (ISP). That is, the user **124** (caller) can use a local Internet access point (gateway **128** or **114**) (i.e., a local phone call) to reach a receiver in a distant area **140** (see FIG. 1 of Lamarque). On the other hand, in Dixon's system, access to a server or servers on a network such as a local network (LAN), an intranet, or the Internet (World Wide Web) (see column 1, lines 15-20 thereof) does not use long distance carriers and thus does not incur any long-distance usage rates.

Accordingly, not only the Lamarque's system would not be operable in Dixon's system, but also the alleged modification does not provide any advantages of bypassing long distance carriers and their permanent usage rates, failing to provide required motivation to combine.

Furthermore, even if Lamarque's alleged teaching of the "call-in" user is allegedly combined with Dixon, the modified call-in user (replacing Dixon's client **101**) would not place a call to Dixon's control server **111** because Dixon's control server **111**, which is on the other side of the network **105**, as is apparent from FIG. 1 of Dixon, cannot couple the alleged call to the alleged data communication network **105**, as recited in claim 1.

Consequently, (i) Dixon, whether considered alone or combined with the alleged teachings of Lamarque, does not teach or suggest the claimed backup server as recited in claim 1, (ii) the alleged combination is not obvious because the prior art fails to provide required motivation for combination, and (iii) even if Dixon and Lamarque are allegedly combined, the modified system is inoperable, further rendering the alleged combination unobvious.

Accordingly, it is respectfully requested that the rejection of claim 1 based on Dixon and Lamarque be withdrawn.

Other Independent Claims

Claims 9, 13, 17, 20, 30, 63, 66, 68, 69, 71, 74, 76, 78, 81, and 83, as amended, recite, among others, substantially the same distinctive features as discussed above with respect to claim 1. Accordingly, the discussions above are equally applicable to these claims and thus these claims are also patentable over Dixon and Lamarque at least for the same reasons.

Dependent Claims

Claims 2-4 and 85 depend from claim 1, claims 10-12 and 87 depend from claim 9, claims 14-16 and 88 depend from claim 13, claims 18-19, 52 and 89 depend from claim 17, claims 21-24, 26 and 90 depend from claim 20, claims 31-32 and 91 depend from claim 30, claims 64-65 depend from claim 63, claim 67 depends from claim 66, claim 70 depends from claim 69, claims 72-73 depend from claim 71, claim 75 depends from claim 74, claim 77 depends from claim 76, claims 79-80 depend from claim 78, claim 82 depends from claim 81, and claim 84 depends from claim 83, and thus include the limitations of respective independent claims. The argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable at least for the same reasons.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

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Serial No. 09/452,285
Atty. Docket No. CISCO-1515 (032590-083)

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-1698.

Respectfully submitted,
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